

Steering Committee:

Dwayne Bohac, Chairman
Alma Allen, Vice Chairman

Rafael Anchia
Angie Chen Button
Joe Deshotel

John Frullo
Donna Howard

Ken King
Brooks Landgraf
J. M. Lozano

Eddie Lucio III
Ina Minjarez

Andrew Murr
Joe Pickett
Gary VanDeaver

HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, May 03, 2017
85th Legislature, Number 62
The House convenes at 10 a.m.

Eighty-three bills and two joint resolutions are on the daily calendar for second-reading consideration today. Those analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.



Dwayne Bohac
Chairman
85(R) - 62

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Wednesday, May 03, 2017

85th Legislature, Number 62

SB 21 by Birdwell	Establishing certain procedures for an Article V convention	1
SJR 38 by Estes	Rescinding certain applications for an Article V convention	7
HB 2465 by S. Davis	Allowing contributions to direct campaign expenditure committees	10
HB 2470 by S. Davis	Allowing the Ethics Commission to charge a meal fee at seminars	12
HB 2471 by S. Davis	Prohibiting political contributions and expenditures from public funds	13
HJR 37 by E. Johnson	Authorizing Legislature to allow banks to hold raffles promoting saving	15
HB 22 by Huberty	Revising public school accountability, delaying A-F ratings	18
HB 23 by Huberty	Establishing grant programs for students with autism	27
HB 1917 by Raymond	Continuing Medicaid MCO pharmacy benefit plan contract requirements	30
HB 550 by Guillen	Requiring sound-producing devices on non-motorized vessels	33
HB 967 by VanDeaver	Allowing the TexAmericas Center to promote economic development	34

SUBJECT: Establishing certain procedures for an Article V convention

COMMITTEE: State and Federal Power and Responsibility, Select — committee substitute recommended

VOTE: 5 ayes — Darby, Murr, Gonzales, K. King, Paddie
2 nays — Anchia, Turner
2 absent — E. Johnson, S. Thompson

SENATE VOTE: On final passage, February 28 — 21 – 10 (Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: *On House companion, HB 506:*
For — Tamara Colbert, Convention of States - Texas; and six individuals; (*Registered, but did not testify:* Ray Allen, PublicData.com; James Lennon, Coalition for Public Responsibility PAC; Robin Lennon, Kingwood Tea Party; Michael Sullivan, Empower Texans; Alan Arvello, William Bailey, Richard Bohnert, Ester Brant, John Brant, David Brown, Ana Chapman-Wydrinski, Robert Coffey, Sharon Correll, Sylvia Coulson, Michelle Davis, George Dawes, James Dettmann, Brent Dunklau, Stephenn Duvall, Cal Elliott, Jan Elliott, William Ely, Jan Fitzgerald, Keith Fitzgerald, Marian Freeland, Barbara Geerlings, PJ Geerlings, Gary Goff, Sammi Hammers, Neda Henery, Thomas Henry, Karl Heubaum, Audrey Howard, Kirsten Jackson, Mary Jones, Edna Krueger, Sandra Lapsley, Christopher Lewis, Robbie McDaniel, Peter McPhee, Bruce Melberg, Natalie Miller, James Osteen, Robert Peery, Barbara Peters, Wendell Pool, Corey Rapp, Jim Richardson, Douglas Richter, Jim Siphiora, Stephen Smith, Bill Thoreson, Paula Trigg, Thomas Trigg, Laraine Wahrmund, and James Young, Convention of States Project-Texas; and 44 individuals)

Against — Chris Blystone, Citizen Soldiers of Texas; Barbara Harless, North Texas Citizens Lobby; Kurt Hyde, Denton County Republican Assembly; Nancy True, Texas Liberty Committee; and eight individuals; (*Registered, but did not testify:* Suzanne Carpenter, Texas Liberty

Committee; Grace Chimene, League of Women Voters of Texas; Kelli Cook, Texas Campaign for Liberty; Jim Reaves, Texas Farm Bureau; Dana Blanton; Cindy Geisman; Annie Marrs)

BACKGROUND: Art. V of the Constitution of the United States requires Congress to call a convention to propose constitutional amendments upon application of the legislatures of two-thirds of the states. Any amendments adopted by an Article V convention must be ratified by the legislatures of three-fourths of the states.

DIGEST: CSSB 21 would establish certain procedures relating to the selection, behavior, duties, and oversight of delegates to a convention called by Congress under Art. V of the Constitution of the United States.

Selection. CSSB 1 would require the governor to serve as the head delegate of the delegation from Texas. In addition to the governor, the Texas House of Representatives and the Texas Senate would appoint the remaining number of delegates, either half-and-half or, if the number of delegates needed was odd, three-fifths and two-fifths, respectively. If only two delegates were allocated, the House would appoint the second, with the first being the governor. Both houses would appoint a specific alternate to any delegate they appoint.

Under the definitions in the bill, a delegate could be any individual appointed by either the House or Senate. If the delegate appointed was a legislator, his or her service as a delegate would be an additional duty of the member's legislative office.

Behavior and duties. The bill would prohibit delegates from accepting a gift, a loan, food or beverage, entertainment, lodging, transportation, or another benefit from any person required to register as a lobbyist. Delegates would not be entitled to compensation for their service but would be entitled to reimbursement for necessary expenses.

The Legislature would by joint resolution issue instructions to the delegates to govern their actions at the convention, except that the Legislature could not adopt instructions that authorized a delegate to consider or vote in favor of an amendment not authorized by the

Legislature in its application for the convention.

Each delegate and alternate would be required to file a certain executed oath with the Texas secretary of state before voting or taking an action as part of the delegation.

CSSB 21 would prohibit delegates from casting “unauthorized votes,” defined as votes contrary to instructions adopted above or votes which exceed the scope of either the Legislature’s application or the convention itself. Under the bill, any unauthorized vote would be considered invalid.

Oversight. The house that appointed a delegate could make a determination that a delegate’s vote was unauthorized. Such a determination would disqualify the delegate from continuing to serve. A house could also recall a delegate or alternate.

The bill also would require the Legislature to create an Article V Oversight Committee when delegates are appointed. The committee would consist of ten members:

- the lieutenant governor, who would be a joint chair;
- the speaker of the House, who would be a joint chair;
- the chairs of the House and Senate State Affairs committees; and
- three members of the House and Senate, appointed by the speaker and lieutenant governor, respectively.

The Oversight Committee would meet at the call of either joint chair, and could declare a vote by an appointed delegate to be unauthorized if at least seven members of the committee voted to do so. However, the committee could only do so if the Legislature was not convened.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS
SAY:

CSSB 21 would prepare Texas for the possibility of a convention called under Article V of the U.S. Constitution. Twenty-eight states have already made applications, which means that a convention is increasingly likely.

Texas should not want to be left out and should establish procedures so it can have a seat at the table, even if the Legislature does not apply for a convention itself.

Selection. CSSB 21 correctly would allow the Legislature to select a delegation of citizens to represent Texas before an Article V convention. This would allow choice from the widest group of people, allowing the creation of the most qualified delegation possible. Through the oversight mechanisms established in the bill, legislators could exercise as much influence with an appointed individual as they would be able to with a fellow member of the Legislature.

The procedures and selection of delegates would be left to a future legislature, meaning that a delegation could very well be bipartisan. In any case, securing the state's interests is the goal of any delegation, and both political parties have an interest in seeing Texas succeed.

Oversight. While some suggest that unauthorized votes should be subject to criminal penalties, such a move would go too far. Several other mechanisms exist to limit the possibility of rogue delegates, including the ability to recall and the possibility that a vote could be declared invalid. Furthermore, because of the sometimes vague nature of policy, this could lead delegates to be hesitant in gray areas. In any case, the state should not establish criminal penalties without first establishing that malice existed.

Whether or not an Article V convention was supported by the Legislature, the state needs to establish procedures in preparation to ensure that Texas has a seat at the table if it does happen. The convention will decide its rules and set its agenda regardless of how or if Texas acts on CSSB 21, so the state should at least establish the procedures to ensure a delegation was present to support Texas' interests.

**OPPONENTS
SAY:**

CSSB 21 should be amended to better ensure an accurate representation of a cross-section of Texas and adherence to the state's application for a convention under Article V of the U.S. Constitution.

Selection. CSSB 21 would err in allowing non-legislators to be delegates to a convention. Once chosen, non-legislators have a limited incentive to

make decisions reflective of the will of the individuals they represent. On the other hand, legislators must answer both to their fellow members and to voters.

The bill also should not make the governor a delegate. A governor could not be recalled and could not be held accountable by either house or the Oversight Committee. Also, questions exist over whether it would be constitutional for the governor to be a delegate. Texas Constitution, Art. 4, sec. 6 provides that the governor shall not hold any other office, be it civil, military, or corporate.

In any case, a delegation needs to be representative of the state's political makeup. The selection of a limited number of delegates by the Legislature would provide no incentive to include delegates from the minority party, making the probability of an accurate cross-section of the political views of the state unlikely at best.

Oversight. Representing Texas at an Article V convention is one of the most important duties the Legislature could give to anyone, and with that comes the need for strong incentives against unauthorized votes and rogue delegates. Therefore, criminal penalties should be attached to a determination that a vote was unauthorized, with actual jail time for delegates who knowingly went beyond the Legislature's instructions.

OTHER
OPPONENTS
SAY:

Oversight. CSSB 21 is wrongheaded because the state should not be considering participation in a convention under Article V. No matter what procedures the Legislature laid out, it could not guarantee unauthorized votes would actually be rescinded and considered invalid because the convention would set its own rules. This bill could help create the conditions for a runaway convention, and that risk is too great to take.

NOTES:

CSSB 21 differs from the bill as received from the Senate in that the committee substitute would:

- require the governor to be a delegate
- not require delegates to be members of the Legislature; and
- not impose a criminal penalty on a delegate who knowingly cast an unauthorized vote.

The companion bill, HB 506 by P. King, was considered in a public hearing of the House Select Committee on State and Federal Power and Responsibility on April 13 and left pending.

SUBJECT: Rescinding certain applications for an Article V convention

COMMITTEE: State and Federal Power and Responsibility, Select — committee substitute recommended

VOTE: 7 ayes — Darby, Murr, Anchia, Gonzales, K. King, Paddie, Turner
0 nays
2 absent — E. Johnson, S. Thompson

SENATE VOTE: On final passage, February 28 — 31-0

WITNESSES: For — Bill Eastland; Andy Prior; (*Registered, but did not testify*: Kurt Hyde, Denton County Republican Assembly; Carolyn Galloway, Eagle Forum; Grace Chimene, League of Women Voters of Texas; Will Newton, NFIB/Texas; Barbara Harless, North Texas Citizens Lobby; Jim Reaves, Texas Farm Bureau; Suzanne Carpenter and Nancy True, Texas Liberty Committee; and 12 individuals)

Against — (*Registered, but did not testify*: Yannis Banks, NAACP-Texas; Michael Badnarik; Bill Kelberlau)

BACKGROUND: Article V of the U.S. Constitution requires Congress to call a convention to propose constitutional amendments upon application of the legislatures of two-thirds of the states. Any amendments adopted by an Article V convention must be ratified by the legislatures of three-fourths of the states.

HCR 31 by Donaldson, passed in 1977, requested that Congress call a constitutional convention for the specific purpose of proposing a balanced budget amendment, which would provide that the total of all federal appropriations may not exceed estimated federal revenues in the absence of a national emergency.

DIGEST: CSSJR 38 would rescind all applications for an Article V convention from Texas legislators prior to the 85th Legislature, with the exception of the

application provided by HCR 31 by Donaldson in 1977.

CSSJR 38 would rescind any application during or after the 85th Legislature if a convention was not called within eight years.

CSSJR 38 would direct the Texas secretary of state to forward official copies of the joint resolution to Congress. The joint resolution would be accompanied by a cover letter requesting that CSSJR 38 be printed in the Congressional Record and that it be referred to the appropriate committees.

**SUPPORTERS
SAY:**

CSSJR 38 would ensure that any convention called under Article V of the Constitution of the United States, and any delegation from Texas to such a convention, would have a clean slate with a clear and focused mandate. Over the years, the Texas Legislature has approved more than a dozen resolutions officially applying to Congress to call an Article V convention, and such applications remain valid until they are rescinded. Thus, if a convention were to be called without the passage of CSSJR 38, any delegation from Texas would have no clear single mandate, possibly leading to proposed amendments that were not in line with the intent of the Legislature.

CSSJR 38 would not in and of itself apply for a convention, but approval of CSSJR 38 would be required for CSSJR 2 by Birdwell to be effective. CSSJR 2 would apply for a convention and is on the May 4 Constitutional Amendments Calendar.

CSSJR 38 would provide an appropriate amount of time before the application would expire. Eight years would give other states enough time to make their applications, should they choose to do so. The Legislature should assess again after a reasonable period of time whether or not an Article V convention was in the best interest of the state, and therefore any applications made should be subject to expiration.

CSSJR 38 appropriately would not rescind the application for a balanced budget amendment. Recent experience has even more clearly shown that the temptation for out-of-control deficit spending is too strong and must be addressed through a constitutional amendment. Excessive national debt

and a large deficit burdens future generations and can be a drag on the economic health of the nation as a whole.

A balanced budget amendment could be drafted such that Congress was able to respond to recessions and crises while being effectively limited. Such an application would clearly reflect the current intent of the Legislature and, as evidenced by HCR 31 by Donaldson in 1977, has been a consistent point of interest of the state for decades.

OPPONENTS
SAY:

CSSJR 38 should be amended so that it would not provide for the expiration of any application issued by the 85th Legislature. Under CSSJR 38, the application would expire in eight years, which is not enough time to allow other states to join Texas in calling for the convention. The need for reform via an Article V convention would not go away, so any application approved by this Legislature should not expire until directly rescinded.

OTHER
OPPONENTS
SAY:

CSSJR 38 would be a step in the right direction, but should also rescind HCR 31 by Donaldson from 1977. Such a balanced budget amendment would eliminate the federal government's ability to respond appropriately to budget cycles when the economy needs a boost. For instance, some economists have concluded that had the amendment gone into effect in fiscal 2012, the effect on the economy would have doubled the unemployment rate. Analogies that suggest the federal government should balance budgets as families do ignore the fact that individuals often take out mortgages or loans for worthy investments.

Many specific programs would be at risk if a balanced budget were to pass. Social Security might have to cut benefits even if it could draw down reserves, as drawing down the reserves would impact the balance of the budget. The Federal Deposit Insurance Corporation and the Pension Benefit Guaranty Corporation also might not be able to respond to failures because liquidating their assets would impact the balance of the budget.

NOTES:

CSSJR 38 differs from the joint resolution as received from the Senate in that the committee substitute would provide that any application for an Article V convention from the 85th Legislature expire after eight years, rather than 12 years.

SUBJECT: Allowing contributions to direct campaign expenditure committees

COMMITTEE: General Investigating and Ethics — favorable, without amendment

VOTE: 6 ayes — S. Davis, Moody, Capriglione, Nevárez, Shine, Turner
0 nays
1 absent — Price

WITNESSES: For — (*Registered, but did not testify*: Joanne Richards, Common Ground for Texans; Hamilton Richards)

Against — None

On — (*Registered, but did not testify*: Ian Steusloff, Texas Ethics Commission)

BACKGROUND: In 2013, the 5th U.S. Circuit Court of Appeals held in *Texans for Free Enterprise v. Texas Ethics Commission* that corporations and labor organizations may make political contributions and expenditures to certain political committees that make only direct campaign expenditures that are independent of any political campaign. The Texas Ethics Commission, in its 2016 report to the Legislature, recommended amending Election Code, ch. 253 to permit a corporation or labor organization to make such expenditures.

DIGEST: HB 2465 would add a subsection to Election Code, ch. 253 to allow a corporation or labor organization to make a political contribution from its own property to a political committee that:

- was not established or controlled by a candidate or officeholder;
- made or intended to make direct campaign expenditures;
- did not make or intend to make political contributions to a candidate; an officeholder; a specific-purpose committee established or controlled by a candidate or officeholder; or a

political committee that made or intended to make political contributions to a candidate, officeholder, or specific-purpose committee established or controlled by a candidate or officeholder; and

- had filed an affidavit with the Texas Ethics Commission stating its intention to operate as described.

The bill would take effect September 1, 2017.

SUBJECT: Allowing the Ethics Commission to charge a meal fee at seminars

COMMITTEE: General Investigating and Ethics — favorable, without amendment

VOTE: 6 ayes — S. Davis, Moody, Capriglione, Nevárez, Shine, Turner
0 nays
1 absent — Price

WITNESSES: For — (*Registered, but did not testify:* Joanne Richards, Common Ground for Texans; Tom Forbes, Professional Advocacy Association of Texas; Carol Birch, Public Citizen Texas; Craig McDonald, Texans for Public Justice; Lon Burnam; Jack Gullahorn; Hamilton Richards)

Against — None

On — (*Registered, but did not testify:* Ian Steusloff, Texas Ethics Commission)

BACKGROUND: Government Code, sec. 571.071 authorizes the Texas Ethics Commission to provide seminars for persons required to register as lobbyists that address issues involving lobbying, political contributions and expenditures, and others. The commission may charge a fee for attending a seminar in an amount necessary to cover costs.

DIGEST: HB 2470 would allow the Texas Ethics Commission to offer seminars on laws administered and enforced by the commission and other relevant laws, as determined by the commission. The commission could include the cost of food and nonalcoholic beverages in attendance fees charged to persons attending seminars.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUBJECT: Prohibiting political contributions and expenditures from public funds

COMMITTEE: General Investigating and Ethics — favorable, without amendment

VOTE: 6 ayes — S. Davis, Moody, Capriglione, Nevárez, Shine, Turner
0 nays
1 absent — Price

WITNESSES: For — (*Registered, but did not testify*: Joanne Richards, Common Ground for Texans; Carol Birch, Public Citizen Texas; Craig McDonald, Texans for Public Justice; Lon Burnam; Hamilton Richards)

Against — None

On — (*Registered, but did not testify*: Ian Steusloff, Texas Ethics Commission)

BACKGROUND: Election Code, sec. 255.03 prohibits an officer or employee of a political subdivision from knowingly spending or authorizing the spending of public funds for political advertising.

The Texas Ethics Commission in its 2016 report to the Legislature recommended that the prohibition be extended to prohibit the use of public funds to make political expenditures on a ballot issue.

DIGEST: HB 2471 would prohibit an officer or employee of a political subdivision from spending or authorizing spending of public funds to make a political contribution or a political expenditure. An officer or employee of a political subdivision also could not directly or indirectly employ a person to use public funds to make an unlawful political contribution or political expenditure.

A violation of this prohibition would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

The bill would take effect September 1, 2017, and would apply only to a political contribution or political expenditure made on or after that date.

SUBJECT: Authorizing Legislature to allow banks to hold raffles promoting saving

COMMITTEE: Investments and Financial Services — favorable, without amendment

VOTE: 6 ayes — Parker, Stephenson, Burrows, Dean, Holland, Longoria

0 nays

1 absent — E. Johnson

WITNESSES: For — Karen Neeley, Independent Bankers Association of Texas; Jeff Huffman, Texas Credit Union Association; Joshua Houston, Texas Impact; (*Registered, but did not testify*: Melodie Durst, Credit Union Coalition of Texas; Woody Widrow, RAISE Texas; James Thurston, United Ways of Texas)

Against — None

On — (*Registered, but did not testify*: Everette Jobe, Texas Department of Banking)

BACKGROUND: Art. 3, sec. 47 of the Texas Constitution requires the Legislature to prohibit lotteries and gift enterprises in the state, with certain exceptions, including bingo games and charitable raffles conducted by various nonprofit or religious organizations.

DIGEST: HJR 37 would amend Art. 3, sec. 47 of the Texas Constitution to specify that the section did not prohibit the Legislature from authorizing credit unions or other financial institutions to conduct promotional activities to encourage savings. These promotional activities could award a prize to one or more of the institution's depositors selected by lot.

The ballot proposal would be presented to voters at an election on November 7, 2017. The proposal would read: "The constitutional amendment relating to legislative authority to permit credit unions and other financial institutions to award prizes by lot to promote savings."

**SUPPORTERS
SAY:**

HJR 37 would authorize the Legislature to allow banks and credit unions to host savings promotion raffles, also known as prize-linked savings accounts (PLSAs), which offer incentives to save rather than spend or gamble away earnings. Savings incentives are needed in the state, as more than one-third of Texas households lack a savings account, and about half do not have a three-month emergency fund.

Many states have removed legal barriers to PLSAs and seen millions of dollars in consumer savings and thousands of new accounts as a result. These savings can allow households to weather financial emergencies such as car repairs or medical bills or to accumulate wealth over time to pursue retirement, higher education, or home ownership. Savings also reduce reliance on sometimes destructive short-term lending.

Savings promotion raffles are not gambling, as they require no form of payment or consideration. They are unlike other raffles, in that they directly benefit the consumer even if the consumer does not win a prize. Depositors could withdraw their money at any time and thus could not lose as in a raffle in any other industry.

While the enabling legislation, HB 471 by E. Johnson, probably would not be subject to constitutional challenge, HJR 37 is nonetheless necessary and would finally resolve any constitutional questions. Last session, HB 1628 by E. Johnson was vetoed by the governor on the grounds that it would violate Art. 3, sec. 47 of the Texas Constitution.

**OPPONENTS
SAY:**

HJR 37, if accompanied by the enabling legislation, HB 417 by E. Johnson, would be a carve-out for one industry to do a raffle and would be the only non-charitable raffle allowed in the state. The Legislature should consider the equity of allowing a single industry to conduct raffles.

**OTHER
OPPONENTS
SAY:**

HJR 37 is unnecessary, as the Texas Constitution only requires the prohibition of lotteries, which require some form of payment or consideration to enter. Because a savings promotion raffle merely requires a deposit into an ordinary savings account, it would not be subject to the constitutional prohibition or challenge, and thus HJR 37 would have no functional effect.

HJR 37
House Research Organization
page 3

NOTES: According to the Legislative Budget Board, HJR 37 would have no fiscal implication to the state other than the cost of publication, which would be \$114,393.

The enabling legislation for HJR 37 is HB 471 by E. Johnson, which is on the General State Calendar for today.

SUBJECT: Revising public school accountability, delaying A-F ratings

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Huberty, Bernal, Allen, Bohac, Deshotel, Dutton, Jr., Gooden,
K. King, Koop, Meyer, VanDeaver

0 nays

WITNESSES: *(at March 21 hearing)*

For — Sara Ptomey, Aldine, Urban Curriculum Council; Mary Starling, Alief ISD; Drew Scheberle, Austin Chamber of Commerce; Michael Hinojosa, Dallas ISD, Texas Urban Council, Texas Association of School Administrators; Pauline Dow, North East Independent School District; Brian Binggeli, Plano ISD; Dr. Robert Bostic, Stafford Municipal School District; Theresa Trevino, TAMSA; Barry Haenisch, Texas Association of Community Schools; Mary Ann Whiteker, Texas Association of School Administrators; Doug Williams, Texas Association of School Administrators and Sunnyvale ISD; Holly Eaton, Texas Classroom Teachers Association; Robert Floyd, Texas Music Educators Association and Texas Coalition for Arts Education; Sheri Doss, Texas PTA; HD Chambers, Texas School Alliance; Portia Bosse, Texas State Teachers Association; Monty Exter, The Association of Texas Professional Educators; Laura Yeager; *(Registered, but did not testify:* Julie Cowan, AISD board of trustees; Audrey Young, Apple Springs ISD President, Board of Trustees; Cindy Anderson and Amber Elenz, Austin ISD; Robert McLain, Channing ISD; Mike Meroney, Huntsman Corporation, BASF Corporation, Texas Workorce Coalition; William Chapman and James Garrett, Jarrell ISD; Grace Chimene, League of Women Voters of Texas; Gary Bingham, Mesquite ISD School Board; Deborah Caldwell, North East Independent School District; Liz Morse, Richardson ISD; Priscilla Camacho, San Antonio Chamber of Commerce; Todd Webster, Spring Branch ISD; Jesse Romero, Texas Association for Bilingual Education; Stephanie Simpson, Texas Association of Manufacturers; Grover Campbell, Texas Association of School Boards; Vernagene Mott, Texas Association of School Boards; Veronica Garcia, Texas Charter Schools Association; Robert Flores, Texas Citizens Action Network; Michael

White, Texas Construction Association; Janna Lilly, Texas Council of Administrators of Special Education; Mark Terry, Texas Elementary Principals and Supervisors Association; Colby Nichols, Texas Rural Education Association; Tami Keeling, Victoria ISD, TASB; and seven individuals)

Against — None

On — Randy Willis, Granger ISD, Texas Rural Education Association; Ann Smisko, Raise Your Hand Texas; Mike Morath and Shannon Housson, Texas Education Agency; Ted Melina Raab, Texas AFT (American Federation of Teachers); Courtney Boswell, Texas Aspires; Miranda Goodsheller, Texas Association of Business; Chloe Sikes, Texas Latino Education Coalition (TLEC); Steve Swanson; (*Registered, but did not testify*: David Anderson, Arlington ISD Board of Trustees; Kara Belew and Von Byer, Texas Education Agency; Kim Cook and Heather Sheffield, Texans Advocating for Meaningful Student Assessment)

(*at April 4 hearing*)

For — HD Chambers, Texas School Alliance, Alief ISD

Against — None

On — Mike Morath, Texas Education Agency

BACKGROUND: The 84th Legislature in 2015 enacted HB 2804 by Aycock, which adopted a new system for evaluating school districts and campuses and required campuses to be assigned a performance rating corresponding to the letters A-F beginning in the 2017-18 school year.

DIGEST: CSHB 22 would revise the public school accountability system to restructure and reduce the domains of achievement indicators on which districts and campuses are evaluated. The bill would limit the use of student performance on state exams in the rating system and would delay the implementation of A-F letter ratings until the 2019-2020 school year.

Letter ratings. For the 2017-18 and 2018-19 school years, instead of using A-F letter ratings, the Commissioner of Education would be

required to evaluate district and campus performance and assign ratings using the 2016 Accountability Manual, which rates schools as met standard or improvement required. The commissioner could by rule adopt revisions to the manual for the 2017-18 and 2018-19 school years for necessary date and deadlines and federal law changes.

The bill would remove requirements to assign districts and campuses an overall rating of A, B, C, D, or F but would retain requirements for those letter grades to be assigned to each of the three domains. A domain rating of D would be changed from a reflection of unacceptable performance to a reflection of performance in need of improvement.

The commissioner would be required to prepare reports using data from the 2017-18 and 2018-19 school years on how districts and campuses would have been rated under the A-F system.

Domains. The bill would reduce from five to three the number of domains for evaluating district and campus performance. The commissioner could use indicators based on data that was disaggregated by race, ethnicity, and socioeconomic status to the extent feasible, rather than being required to use them.

The commissioner would be authorized to adjust a domain performance rating for a domain disaggregated by race, ethnicity, socioeconomic status, or another factor by increasing the rating one level.

The commissioner would have to determine a method to exclude newly enrolled students from a district or campus performance rating. A newly enrolled student would be defined as a student who transferred to a Texas school from another state or country and who had not been previously enrolled in a Texas school. The commissioner also would be required to determine a method of attributing greater weight for each school year a student has been continuously enrolled in the district or campus.

The bill would limit student performance on state exams to 50 percent of the ratings in the student achievement and student progress domains.

Student achievement domain. The student achievement domain would

include results from state standardized exams and locally selected assessments under performance standards determined by the education commissioner or the Texas Higher Education Coordinating Board. The bill would require the adoption of achievement indicators for high school students who:

- completed courses in fine arts, physical education, or a language other than English or other courses included in the state's enrichment curriculum and participate in extracurricular activities, including University Interscholastic League activities such as academic, fine arts, and athletic events and foreign language, chess, and robotics clubs;
- completed a dual credit course that satisfies a requirement under the foundation high school program;
- enlisted in the armed forces;
- completed a coherent sequence of courses that lead to a qualifying industry certification as determined by the commissioner;
- were admitted into a postsecondary industry certification program that requires successful high school performance;
- were prepared to enroll and succeed, without remediation, in entry-level college courses.

The bill also would require indicators that computed graduation rates and students who attained the distinguished level of achievement or completed an associate degree while enrolled in high school.

At the middle and junior high school level, an indicator would account for students who dropped out of school the preceding school year and did not return during the current school year by a date determined by the commissioner.

School progress domain. The school progress domain would include indicators for effectiveness in promoting student learning and would compare districts and campuses to those with similar demographic characteristics.

The commissioner would be required to evaluate districts and campuses

using indicators that account for annual improvement on assessments. It would require the indicator accounting for limited English proficiency students who successfully exit a bilingual education or special language program to comply with rules established by the commissioner regarding the development of proficiency in more than one language.

Other indicators of school progress would include:

- students in grades 1 through 8 who successfully completed curriculum requirements for promotion to the next grade;
- students enrolled in grade 9 for the first time who earned the credits required for promotion to the next grade; and
- students who complete varied, rigorous, and relevant curricular options that would lead to postsecondary success, including advanced placement or similar courses; and
- students in grades 6 through 12 who took an advanced placement test, international baccalaureate exam, or college entrance or preliminary college exam.

In this domain, the commissioner would develop an indicator for evaluating relative performance in listed categories among districts and campuses with similar characteristics, including student socioeconomic status, enrollment size, surrounding community attributes, district property wealth per student in weighted average daily attendance, and access to programs and opportunities that promote college and career readiness.

School climate domain. The bill would require at least 50 percent of the school climate domain be based on three programs or categories of performance related to community and student engagement that are locally selected and evaluated. This domain also would include results from a local evaluation of school climate of districts and campuses obtained through a uniform method of data collection adopted by commissioner rule.

The commissioner would be authorized to incorporate a school climate survey as an indicator for the school climate domain. Such a survey would be administered to district administrators, teachers, students, and parents.

Not later than the 2021-22 school year, the commissioner would be required to determine whether the school climate survey would be incorporated by implementing its use of survey information in the 2018-19 school year and requiring the reporting of such survey information in the 2019-20 and 2020-21 school years.

The commissioner could contract with a third party for services related to the survey.

Other school climate indicators would include:

- high school students who completed at least one endorsement;
- high school students who completed a coherent sequence of career and technical courses or a coherent sequence of fine arts courses;
- educationally disadvantaged students who completed a postsecondary readiness course;
- teacher quality as determined by the commissioner, provided that any teacher quality indicator would limit the weight of student performance on assessments to no more than 25 percent; and
- health and wellness as determined by the commissioner.

For campuses that serve students enrolled in prekindergarten, an indicator would be included to account for student participation in full-day prekindergarten. For campuses that serve students enrolled in kindergarten through grade 5, an indicator would be included to account for student participation in literacy and math academies.

The commissioner would be authorized to increase the rating of any domain up to one level, but not more than one time. The commissioner would be required to review performance indicators periodically instead of biennially. In adopting rules to implement the bill, the commissioner would be required to solicit statewide input from persons who would likely be affected, including school boards, administrators, teachers, and parents.

Dropout rates. The bill would add to the list of exclusions for the computation of certain dropout and completion rates students whose

initial enrollment in a Texas school occurred in grades 11 or 12.

Other provisions. The commissioner would be required by September 30 of each year or soon after to define the state standard and indicators for use that school year. In consultation with educators, parents, and business and industry representatives, as necessary, the commissioner would be required to establish and modify standards to achieve the goals of eliminating achievement gaps based on race, ethnicity, and socioeconomic status and ensure Texas is a national leader in preparing students for postsecondary success.

The bill would prohibit the commissioner from requiring participation in certain activities as part of a modified campus turnaround plan that did not directly relate to a concern identified in the written rejection of the original plan.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

**SUPPORTERS
SAY:**

CSHB 22 would make needed improvements to the public school accountability system to reduce the influence of test scores by adding other metrics of student achievement and measuring growth along with content mastery. It would take steps to address socioeconomic disparities between districts by comparing student growth among similarly situated districts and campuses. It would delay the implementation of A-F letter ratings for two school years and eliminate an overall letter grade for districts and campuses.

A-F ratings. The delay in issuing A-F labels would allow additional time to model the letter-grade system so that any required adjustments could be made before the ratings are assigned. It also would give schools and parents a chance to understand and prepare for the letter ratings. The bill would remove an overall letter grade for a school or district, instead assigning letter grades to each of three domains. One letter grade cannot give the full picture of something as complex as educating students who come from different backgrounds and with different challenges.

The commissioner's recent report on how schools would have fared under A-F were not reflective of the quality work performed by Texas educators and exposed some major flaws in the rating system. For example, some schools received a lower grade due to conditions beyond their control, such as student absences or the lack of parental engagement due to parents' work schedules.

Domains. The bill would limit STAAR test scores to 50 percent of the overall score in the student achievement and student progress domains. The inclusion of multiple indicators in each domain would give a broad view of student performance instead of the current system's heavy focus on test scores. It would treat schools more fairly by giving greater weight to the performance of students who had been continuously enrolled in the district.

The commissioner would still be required to disaggregate most data by race, ethnicity, and socioeconomic status to ensure that schools were held accountable for all students. The bill would give permission for the commissioner to make a one-time upward rating adjustment to allow for a special circumstance such as an influx of students due to a natural disaster.

**OPPONENTS
SAY:**

CSHB 22 would create yet another set of revisions to an accountability system that is already overly complex and burdensome. The ratings and the underlying components need to be stabilized so schools can move forward knowing how they will be held accountable by the state.

A-F ratings. CSHB 22 would delay the implementation of a clear and understandable system of rating schools by letter grade. These ratings should be implemented beginning with the 2017-18 school year as planned, and the requirement for a summative grade for each school and district should be retained to allow parents a simple, straightforward way to see how their children's schools are performing. The Legislature is not even giving the letter grade system time to work before making major changes.

Domains. The large number of indicators in the student achievement

domain would make the system substantially more complex and could make it difficult for a district or campus to understand what needs improvement. Rural schools that lack resources to provide opportunities such as dual credit courses and industry certifications would be at a disadvantage on these measurements.

The bill should not weaken requirements to include disaggregated data in the accountability system. Schools should be held accountable for student achievement by sub-groups, such as race, socioeconomic status, and students classified as English learners and special education, to ensure that no students fall through cracks in the education system.

OTHER
OPPONENTS
SAY:

The Legislature should do away completely with the punitive A-F letter grades instead of merely delaying the rating system for two school years. Letter grades miscommunicate the quality of school performance and tend to punish schools serving educationally disadvantaged students and the communities where those schools are located. In addition, a letter rating system risks potential negative impacts on economic development and the Texas public education system.

The bill should be amended to ensure that struggling campuses and districts receive adequate resources from the state to ensure that all children have access to quality learning opportunities.

NOTES:

According to the Legislative Budget Board's fiscal note, CSHB 22 would have a negative impact of \$4.5 million for fiscal 2018-19. Modifying the performance indicators and standards under the state accountability system would result in a cost of \$2.4 million in fiscal 2018 and \$2.1 million in fiscal 2019 for initial development costs. Costs would be \$1.7 million per year in subsequent years.

SUBJECT: Establishing grant programs for students with autism

COMMITTEE: Public Education — committee substitute recommended

VOTE: 7 ayes — Huberty, Bernal, Dutton, Gooden, K. King, Koop, VanDeaver
0 nays
4 absent — Allen, Bohac, Deshotel, Meyer

WITNESSES: For — Suzan Brown, ResponsiveEd; Janna Lilly, Texas Council of Administrators of Special Education; Bennett Ratliff; (*Registered, but did not testify*: Guadalupe Gordon and Eileen Moxley, Archdiocese of San Antonio; Mark Wiggins, Association of Texas Professional Educators; Quintero, Catholic Advocates; Chris Masey, Coalition of Texans with Disabilities; Stacy Ford, Coalition of Human Rights Policy Advocates (CHRPA); Kristin Tassin, Fort Bend ISD; Christine Yanas, Methodist Healthcare Ministries; Chuck Cook, ResponsiveEd; Addie Gomez, Texans for Quality Public Charter Schools; Casey McCreary, Texas Association of School Administrators; Dax Gonzalez, Texas Association of School Boards; Anne Celeste Merlo, Texas Catholic Network; Veronica Garcia, Texas Charter Schools Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Amanda List, Texas League of Community Charter Schools; Kyle Ward, Texas PTA; Colby Nichols, Texas Rural Education Association and Texas Association of Community Schools; Dee Carney, Texas School Alliance; Portia Bosse, Texas State Teachers Association; Aidan Utzman, United Ways of Texas; and 11 individuals)

Against — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings)

On — Jeff Miller, Disability Rights Texas; Leonardo Lopez and Monica Martinez, Texas Education Agency; Christine Broughal; (*Registered, but did not testify*: Steven Aleman, Disability Rights Texas; Kara Belew and Gene Lenz, Texas Education Agency)

DIGEST: CSHB 23 would establish a grant program to fund the provision of innovative services to students with autism at public school districts or open-enrollment charter schools.

Program eligibility and design. A district or charter program to provide services would be eligible for grant funding if it operated as an independent campus or separate program with a separate budget from the home campus. A program also would be required to incorporate evidence-based and research-based design, including the use of empirical data on student achievement and improvement. The program would have to encourage parental support and collaboration, the use of technology, and meaningful inclusion. It would be designed so that the program could be replicated statewide.

Students with autism would be given priority to participate in the program, although students without disabilities or with other disabilities also could enroll. Participation would be limited to students between 3 and 9 years old or those enrolled in third grade or lower. The program could not charge fees other than those authorized by law. No parent or guardian would be required to enroll or keep a child in the program, and the admission, review, and dismissal committee of a student served by special education would need the parent's permission to place a student there.

The program could alter the length in the school day or year, adjust the normally required minutes of instruction received by students, and adopt different staff qualifications and staff-to-student ratios. It also could coordinate services with private or community-based services.

CSHB 23 would allow the commissioner to consider a student with autism enrolled in a program as funded in a mainstream placement, regardless of the time the students spent in a regular classroom setting.

Grants and funding. CSHB 23 would require the Commissioner of Education to develop an application and selection process for no more than 10 grant awards beginning in the 2018-19 school year. Each program would be funded for five years.

External stakeholders, including parents of children with disabilities,

would assist in the grant award selection process. The commissioner would prioritize programs that were collaborative between multiple school districts and schools and reflected the diversity of the state.

A grant awarded to a district or charter would be in addition to Foundation School Program (FSP) funds that the district or charter otherwise was entitled to receive. The commissioner would set aside up to \$20 million in funds appropriated to the FSP for fiscal 2018-19 to fund the grants and would use \$10 million each year. Each recipient could receive no more than \$1 million during fiscal 2018-19. The commissioner would reduce all districts' and charter schools' allotment proportionally to account for the allocated grant funds.

The commissioner and the program also could accept gifts, grants, and donations from private or public sources for the implementation or administration of the program, but could not require any financial contribution from parents.

Report, effective date, and expiration date. The bill would require the commissioner to publish a report on the grant program by December 31, 2021. It would include recommendations for statutory or funding changes to best serve students with autism and data on academic and functional achievements of students enrolled in the program.

The grant program authorized by CSHB 23 would expire on September 1, 2024. The bill would take immediate effect if finally passed by a two-thirds vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have an estimated negative impact of \$258,408 on general revenue related funds for fiscal 2018-19, with a cost of \$10.1 million in each subsequent year through fiscal 2024.

SUBJECT: Continuing Medicaid MCO pharmacy benefit plan contract requirements

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Raymond, Frank, Miller, Minjarez, Rose, Wu

0 nays

3 absent — Keough, Klick, Swanson

WITNESSES: For — Chase Bearden, Coalition of Texans with Disabilities; Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; Pete Martinez, Pharmaceutical Research and Manufacturers of America; Lee Johnson, Texas Council of Community Centers; *(Registered, but did not testify: David Gonzales, Alliance of Independent Pharmacies of Texas; Cynthia Humphrey, Association of Substance Abuse Programs; Eric Woomer, BIO; Dennis Borel, Coalition of Texans with Disabilities; Jordan Williford, Epilepsy Foundation; Gyl Switzer, Mental Health America of Texas; Eric Kunish, National Alliance on Mental Illness-Austin; John Heal, Pharmacy Buying Association Texas and TrueCare Pharmacies; Suzette Fields, Protect TX Fragile Kids; Chad Cantella, Private Providers Association of Texas; Stephanie Simpson, Texas Association of Manufacturers; Thomas Kowalski, Texas Healthcare and Bioscience Institute; Duane Galligher, Texas Independent Pharmacies Association; Justin Hudman, Texas Pharmacy Association; Michael Wright, Texas Pharmacy Business Council; Jason Howell; Erin Jones)*

Against — Scott Simpson, Dell Children's Health Plan; Mary Dale Peterson, Driscoll Health Plan; Jamie Dudensing, Texas Association of Health Plans; Jonathan Vecchiet, Texas Children's Health Plan; *(Registered, but did not testify: Mindy Ellmer, Pharmaceutical Care Management Association; Amanda Martin, Texas Association of Business; Kay Ghahremani, Texas Association of Community Health Plans)*

On — Gary Jessee, Health and Human Services Commission; *(Registered, but did not testify: Rachel Butler, Health and Human Services*

Commission; Khiem Ngo)

BACKGROUND: Government Code, sec. 533.005(a-1) requires a Medicaid managed care organization (MCO) to enforce its pharmacy benefit plan contract requirements until August 31, 2018. An MCO's pharmacy benefit plan contract must:

- exclusively employ the vendor drug program formulary and preserve the state's ability to reduce waste, fraud, and abuse under Medicaid;
- adhere to the Health and Human Services Commission's (HHSC) preferred drug list and procedures for the vendor drug program; and
- include prior authorization procedures for drugs excluded from HHSC's preferred drug list.

Medicaid MCOs receive a capitation, which is a set payment rate, to cover the cost of health care for their enrollees. Included in their capitation is the cost of prescription drug benefits. However, HHSC retains control of the prescription drug formulary and preferred drug list, negotiates drug pricing directly with manufacturers, and uses the rebates to help fund the Medicaid program.

DIGEST: CSHB 1917 would extend the enforcement of a Medicaid managed care organization's pharmacy benefit plan contract requirements until August 31, 2023.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY: CSHB 1917 would preserve a functioning program that provides pharmacy benefits to the Medicaid population in a cost-effective manner. The existing Medicaid vendor drug program allows for public input, establishes patient protections, and produces long-term success in negotiating drug prices with and obtaining substantial rebates from drug manufacturers.

If Medicaid managed care organizations (MCOs) had the ability to create their own preferred drug list, as some suggest, Texas would lose the transparency of the public process through which the preferred drug list is adopted, making it more difficult for patients, providers, and other stakeholders to provide input for the medications that may be covered. The state also would lose millions of dollars in rebates from drug companies. Medicaid MCOs could not guarantee they could achieve their projected cost-savings if they controlled the drug formulary.

Some reports indicate that some Medicaid MCOs do not meet the vendor drug program contractual requirements regarding prior authorization criteria, processing times, denial and approval notices, and data sharing of patients' clinical histories among health plans. This hinders efforts for obtaining prior authorization for antipsychotic medications.

OPPONENTS
SAY:

CSHB 1917 would further delay the ability of Medicaid managed care organizations to control the drug formulary. If MCOs were granted authority to create their own preferred drug lists, they could achieve more cost-savings and set less stringent prior authorization procedures for certain drugs.

NOTES:

CSHB 1917 differs from the bill as filed in that the committee substitute would require the enforcement of a Medicaid managed care organization's pharmacy benefit plan contract requirements until August 31, 2023, instead of August 31, 2030.

SUBJECT: Requiring sound-producing devices on non-motorized vessels

COMMITTEE: Culture, Recreation and Tourism — favorable, without amendment

VOTE: 6 ayes — Frullo, Faircloth, Fallon, Gervin-Hawkins, Krause, Martinez

0 nays

1 absent — D. Bonnen

WITNESSES: For — (*Registered, but did not testify:* David Sinclair, Game Warden Peace Officers Association; John Shepperd, Texas Foundation for Conservation; Susan Patten)

Against — None

On — Kevin Davis, Texas Parks and Wildlife Department

BACKGROUND: Parks and Wildlife Code, sec. 31.065 requires a motorboat to have an efficient whistle or other sound-producing device if one is required by the commandant of the Coast Guard. Sec. 31.073(a) exempts non-motorized vessels from safety equipment requirements, except that they must have a personal flotation device for each person on board and certain lights.

Some have suggested that Texas law contradicts federal law, which requires all vessels to have some form of sound-producing device, and that the state's access to federal funding might be affected as a result.

DIGEST: HB 550 would require non-motorized vessels such as canoes, kayaks, punts, rowboats, sailboats, and rubber rafts to have a sound-producing device prescribed by the commandant of the Coast Guard.

The bill would take immediate effect if finally passed by a two-thirds vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUBJECT: Allowing the TexAmericas Center to promote economic development

COMMITTEE: Special Purpose Districts — committee substitute recommended

VOTE: 7 ayes — Murphy, Perez, Bell, Cortez, Cospers, Lang, Schubert
0 nays

WITNESSES: For — Scott Norton, TexAmericas Center
Against — None

BACKGROUND: Special District Local Laws Code, ch. 3503 creates the TexAmericas Center, a special purpose district with the authority to perform certain activities, including the promotion of the location and development of new businesses, industries, and commercial activities on or related to the district. The center may adopt a resolution to create a nonprofit corporation to acquire and collect expenses of real property.

DIGEST: CSHB 967 would authorize the TexAmericas Center to promote regional economic development and job creation inside the district's boundaries as well as in Bowie County and adjacent counties.

The bill would authorize the center to adopt a resolution to create a nonprofit corporation to undertake a project on behalf of the center, including certain projects necessary for commercial development and expansion of new or existing businesses. Directors of the TexAmericas Center board would have to appoint the members of the board of directors of the nonprofit. Board members would not be required to reside in the district.

A board member or employee of the TexAmericas Center could simultaneously serve as a member of the board of directors of a nonprofit corporation. That member or employee could participate in all votes relating to the business of the center or the nonprofit, regardless of statutory prohibition.

A nonprofit corporation created by the center could not exercise the power of eminent domain. The nonprofit would be subject to requirements of Government Code, ch. 551 and 552, relating to open meetings and public information.

The bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

CSHB 967 would give express authorization for the TexAmericas Center to promote regional economic development and job creation in the area. The center should be a player in bringing jobs back to the area which once held an army ammunition plant. Rural areas in the district have few resources available for large construction or development projects and have to rely on TexAmericas.

The bill also would allow the TexAmericas Center to create a nonprofit to manage functions the center already can perform, such as commercial development and expansion of new or existing businesses. The center already can establish nonprofit corporations for landholding purposes, and these nonprofits would not have the ability to tax. The nonprofits simply would be a tool to foster economic development.

The TexAmericas Center has worked with local leadership on the bill to ensure that its management of economic development in the area would be appropriate and wanted.

**OPPONENTS
SAY:**

CSHB 967 would expand the powers of the TexAmericas Center beyond the realm of what a local government entity should do by allowing the center to manage the economic development of the area. Private vendors should be involved in this process, not the government.

NOTES:

The committee substitute differs from the filed bill in that CSHB 967:

- specifies that the TexAmericas Center could promote regional economic development outside the district boundaries only in Bowie County and adjacent counties;
- would prohibit a nonprofit created under the bill from exercising eminent domain; and
- would subject a nonprofit to certain statutes relating to open

meetings and public information.

A companion bill, SB 1331 by Hughes, was reported favorably from the Senate Committee on Intergovernmental Relations on April 26 and recommended for the local and uncontested calendar.